

REFERENCE TITLE: **spirituous liquor; omnibus**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

# **HB 2391**

Introduced by  
Representatives Crandall: Adams, Clark, Konopnicki, Reagan

**AN ACT**

**AMENDING SECTIONS 4-205.02, 4-210, 4-210.02, 4-213, 4-224, 4-241, 4-244 AND 4-311, ARIZONA REVISED STATUTES; RELATING TO LIQUOR LICENSES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 4-205.02, Arizona Revised Statutes, is amended to  
3 read:  
4 4-205.02. Restaurant license; issuance; regulatory provisions;  
5 expiration; definitions  
6 A. The director may issue a restaurant license to any restaurant in  
7 this state ~~which~~ THAT is regularly open for the serving of food to guests for  
8 compensation and ~~which~~ THAT has suitable kitchen facilities connected with  
9 the restaurant for keeping, cooking and preparing foods required for ordinary  
10 meals.  
11 B. The director shall issue the license in the name of the restaurant  
12 upon application for the license by the owner or lessee of the restaurant,  
13 provided the applicant is otherwise qualified to hold a spirituous liquor  
14 license. The holder of such license is subject to the penalties prescribed  
15 for any violation of the law relating to alcoholic beverages.  
16 C. The holder of a restaurant license may sell and serve spirituous  
17 liquors solely for consumption on the licensed premises. For the purpose of  
18 this subsection, "licensed premises" may include rooms, areas or locations in  
19 which the restaurant normally sells or serves spirituous liquors pursuant to  
20 regular operating procedures and practices and ~~which~~ THAT are contiguous to  
21 the restaurant. For the ~~purpose~~ PURPOSES of this subsection: ~~—~~  
22 1. A restaurant licensee must submit proof of tenancy or permission  
23 from the landowner or lessor for all property to be included in the licensed  
24 premises.  
25 2. A PATIO AREA THAT IS SEPARATED BY A SIDEWALK OR PRIVATE DRIVEWAY IS  
26 CONSIDERED CONTIGUOUS TO THE RESTAURANT.  
27 D. ~~In addition to other grounds prescribed in this title upon which a~~  
28 ~~license may be revoked,~~ NOTWITHSTANDING SECTION 4-209, SUBSECTION A, the  
29 director may ~~revoke~~ ALLOW THE EARLY EXPIRATION OF a restaurant license issued  
30 pursuant to this section ~~in any case in which~~ NINETY DAYS AFTER THE  
31 DEPARTMENT DETERMINES THAT the licensee ~~ceases~~ HAS CEASED to operate as a  
32 restaurant, as prescribed in subsection A of this section. THE NINETY DAY  
33 PERIOD PRESCRIBED IN THIS SUBSECTION MAY NOT BE USED TO EXTEND THE DURATION  
34 OF THE ORIGINAL LICENSE. AFTER THE LICENSE HAS EXPIRED EARLY, THE LICENSEE  
35 MAY APPLY FOR A NEW RESTAURANT LICENSE.  
36 E. Neither the director nor the board may initially issue a restaurant  
37 license if either finds that there is sufficient evidence that the operation  
38 will not satisfy the criteria adopted by the director for issuing a  
39 restaurant license described in section 4-209, subsection B, paragraph 12.  
40 The director shall issue a restaurant license only if the applicant has  
41 submitted a plan for the operation of the restaurant. The plan shall be  
42 completed on forms provided by the department and shall include listings of  
43 all restaurant equipment and service items, the restaurant seating capacity  
44 and other information requested by the department to substantiate that the  
45 restaurant will operate in compliance with this section.

1 F. The holder of the license described in section 4-209, subsection B,  
2 paragraph 12 who intends to alter the seating capacity or dimensions of a  
3 restaurant facility shall notify the department in advance on forms provided  
4 by the department.

5 G. For the ~~purpose~~ PURPOSES of this section:

6 1. "Gross revenue" means the revenue derived from all sales of food  
7 and spirituous liquor on the licensed premises, regardless of whether the  
8 sales of spirituous liquor are made under a restaurant license issued  
9 pursuant to this section or under any other license that has been issued for  
10 the premises pursuant to this article.

11 2. "Restaurant" means an establishment ~~which~~ THAT derives at least  
12 forty per cent of its gross revenue from the sale of food, including sales of  
13 food for consumption off the licensed premises if the amount of these sales  
14 included in the calculation of gross revenue from the sale of food does not  
15 exceed fifteen per cent of all gross revenue of the restaurant.

16 Sec. 2. Section 4-210, Arizona Revised Statutes, is amended to read:

17 4-210. Grounds for revocation, suspension and refusal to renew;  
18 notice; complaints; hearings

19 A. After notice and hearing, the director may suspend, revoke or  
20 refuse to renew any license issued pursuant to this chapter for any of the  
21 following reasons:

22 1. There occurs on the licensed premises repeated acts of violence or  
23 disorderly conduct.

24 2. The licensee fails to satisfactorily maintain the capability,  
25 qualifications and reliability requirements of an applicant for a license  
26 prescribed in section 4-202 or 4-203.

27 3. The licensee or controlling person knowingly files with the  
28 department an application or other document ~~which~~ THAT contains material  
29 information ~~which~~ THAT is false or misleading or while under oath knowingly  
30 gives testimony in an investigation or other proceeding under this title  
31 ~~which~~ THAT is false or misleading.

32 4. The licensee or controlling person is on the premises habitually  
33 intoxicated.

34 5. The licensed business is delinquent for more than ninety days in  
35 the payment of taxes, penalties or interest to the state or to any political  
36 subdivision of the state.

37 6. The licensee or controlling person obtains, assigns, transfers or  
38 sells a spirituous liquor license without compliance with this title or  
39 leases or subleases a license.

40 7. The licensee fails to keep for two years and make available to the  
41 department upon reasonable request all invoices, records, bills or other  
42 papers and documents relating to the purchase, sale and delivery of  
43 spirituous liquors and, in the case of a restaurant or hotel-motel licensee,  
44 all invoices, records, bills or other papers and documents relating to the  
45 purchase, sale and delivery of food.

1           8. The licensee or controlling person is convicted of a felony  
2 provided that for a conviction of a corporation to serve as a reason for any  
3 action by the director, conduct ~~which~~ THAT constitutes the corporate offense  
4 and was the basis for the felony conviction must have been engaged in,  
5 authorized, solicited, commanded or recklessly tolerated by the directors of  
6 the corporation or by a high managerial agent acting within the scope of  
7 employment.

8           9. The licensee or controlling person violates or fails to comply with  
9 this title, any rule adopted pursuant to this title or any liquor law of this  
10 state or any other state.

11           10. The licensee fails to take reasonable steps to protect the safety  
12 of a customer of the licensee entering, leaving or remaining on the licensed  
13 premises when the licensee knew or reasonably should have known of the danger  
14 to such person, or the licensee fails to take reasonable steps to intervene  
15 by notifying law enforcement officials or otherwise to prevent or break up an  
16 act of violence or an altercation occurring on the licensed premises or  
17 immediately adjacent to the premises when the licensee knew or reasonably  
18 should have known of such acts of violence or altercations.

19           11. The licensee or controlling person lacks good moral character.

20           12. The licensee or controlling person knowingly associates with a  
21 person who has engaged in racketeering, as defined in section 13-2301, or has  
22 been convicted of a felony, and the association is of such a nature as to  
23 create a reasonable risk that the licensee will fail to conform to the  
24 requirements of this title or of any criminal statute of this state.

25           B. For the purposes of:

26           1. Subsection A, paragraph 8 of this section, "high managerial agent"  
27 means an officer of a corporation or any other agent of the corporation in a  
28 position of comparable authority with respect to the formulation of corporate  
29 policy.

30           2. Subsection A, paragraphs 9 and 10 of this section, acts or  
31 omissions of an employee of a licensee, ~~which~~ THAT violate any provision of  
32 this title or rules adopted pursuant to this title shall be deemed to be acts  
33 or omissions of the licensee, **EXCEPT THAT IF A TRAINED DOORPERSON WILFULLY  
34 AND UNLAWFULLY ADMITS PERSONS UNDER TWENTY-ONE YEARS OF AGE TO THE LICENSED  
35 PREMISES WITHOUT THE KNOWLEDGE OR CONSENT OF THE LICENSEE, THE UNLAWFUL  
36 ADMISSION OF THOSE PERSONS TO THE PREMISES BY THE TRAINED DOORPERSON SHALL  
37 NOT BE DEEMED TO BE ACTS OR OMISSIONS OF THE LICENSEE.** Acts or omissions by  
38 an employee or licensee committed during the time the licensed premises were  
39 operated pursuant to an interim permit or without a license may be charged as  
40 if they had been committed during the period the premises were duly licensed.

41           C. The director may suspend, revoke or refuse to issue, transfer or  
42 renew a license under this section based solely on the unrelated conduct or  
43 fitness of any officer, director, managing agent or other controlling person  
44 if the controlling person retains any interest in or control of the licensee  
45 after sixty days following written notice to the licensee. If the

1 controlling person holds stock in a corporate licensee or is a partner in a  
2 partnership licensee, the controlling person may only divest himself of his  
3 interest by transferring the interest to the existing stockholders or  
4 partners who must demonstrate to the department that they meet all the  
5 requirements for licensure. For the purposes of this subsection, the conduct  
6 or fitness of a controlling person is unrelated if it would not be  
7 attributable to the licensee.

8 D. If the director finds, based on clear and convincing evidence in  
9 the record, that a violation involves the use by the licensee of a  
10 drive-through or other physical feature of the licensed premises that allows  
11 a customer to purchase spirituous liquor without leaving the customer's  
12 vehicle and that the use of that drive-through or other physical feature  
13 caused the violation, the director may suspend or terminate the licensee's  
14 use of the drive-through or other physical feature for the sale of spirituous  
15 liquor, in addition to any other sanction.

16 E. The director may refuse to transfer any license or issue a new  
17 license at the same location if the director has filed a complaint against  
18 the license or location ~~which~~ THAT has not been resolved alleging a violation  
19 of any of the grounds set forth in subsection A of this section until such  
20 time as the complaint has been finally adjudicated.

21 F. The director shall receive all complaints of alleged violations of  
22 this chapter and is responsible for the investigation of all allegations of a  
23 violation of, or noncompliance with, this title, any rule adopted pursuant to  
24 this title or any condition imposed upon the licensee by the license. When  
25 the director receives three such complaints from any law enforcement agency  
26 resulting from three separate incidents at a licensed establishment within a  
27 twelve-month period, the director shall transmit a written report to the  
28 board setting forth the complaints, the results of any investigation  
29 conducted by the law enforcement agency or the department relating to the  
30 complaints and a history of all prior complaints against the license and  
31 their disposition. The board shall review the report and may direct the  
32 director to conduct further investigation of a complaint or to serve a  
33 licensee with a complaint and notice of a hearing pursuant to subsection G of  
34 this section.

35 G. Upon the director's initiation of an investigation or upon the  
36 receipt of a complaint and an investigation of the complaint as deemed  
37 necessary, the director may cause a complaint and notice of a hearing to be  
38 directed to the licensee setting forth the violations alleged against the  
39 licensee and directing the licensee, within fifteen days after service of the  
40 complaint and notice of a hearing, to appear by filing with the director an  
41 answer to the complaint. Failure of the licensee to answer may be deemed an  
42 admission by the licensee of commission of the act charged in the complaint.  
43 The director may then vacate the hearing and impose any sanction provided by  
44 this article. The director may waive any sanction for good cause shown  
45 including excusable neglect. With respect to any violation of this title or

1 any rule adopted pursuant to this title that is based on the act or omission  
2 of a licensee's employee, the director shall consider evidence of mitigation  
3 presented by the licensee and established by a preponderance of the evidence  
4 that the employee acted intentionally and in violation of the express  
5 direction or policy adopted by the licensee and communicated to the employee  
6 and that the employee successfully completed training in a course approved by  
7 the director pursuant to section 4-112, subsection G, paragraph 2. The  
8 director may set the hearing before himself or an administrative law judge on  
9 any of the grounds set forth in subsection A of this section. Instead of  
10 issuing a complaint, the director may provide for informal disposition of the  
11 matter by consent agreement or may issue a written warning to the licensee.  
12 If a warning is issued, the licensee may reply in writing and the director  
13 shall keep a record of the warning and the reply.

14 H. A hearing shall conform to the requirements of title 41, chapter 6,  
15 article 10. At the hearing an attorney or corporate officer or employee of a  
16 corporation may represent the corporation.

17 I. The expiration, cancellation, revocation, reversion, surrender,  
18 acceptance of surrender or termination in any other manner of a license does  
19 not prevent the initiation or completion of a disciplinary proceeding  
20 pursuant to this section against the licensee or license. An order issued  
21 pursuant to a disciplinary proceeding against a license is enforceable  
22 against other licenses or subsequent licenses in which the licensee or  
23 controlling person of the license has a controlling interest.

24 J. The department shall provide the same notice as is provided to the  
25 licensee to a lienholder, ~~which~~ THAT has provided a document under section  
26 4-112, subsection B, paragraph 3, ~~of~~ of all disciplinary or compliance action  
27 with respect to a license issued pursuant to this title. The state shall not  
28 be liable for damages for any failure to provide any notice pursuant to this  
29 subsection.

30 K. In any disciplinary action pursuant to this title, a lienholder may  
31 participate in the determination of the action. The director shall consider  
32 mitigation on behalf of the lienholder if the lienholder proves all of the  
33 following by a preponderance of the evidence:

34 1. That the lienholder's interest is a bona fide security interest.  
35 For the purposes of this paragraph, "bona fide security interest" means the  
36 lienholder provides actual consideration to the licensee or the licensee's  
37 predecessor in interest in exchange for the lienholder's interest. Bona fide  
38 security interest includes a lien taken by the seller of a license as  
39 security for the seller's receipt of all or part of the purchase price of the  
40 license.

41 2. That a statement of legal or equitable interest was filed with the  
42 department before the alleged conduct occurred ~~which~~ THAT is the basis for  
43 the action against the license.

44 3. That the lienholder took reasonable steps to correct the licensee's  
45 prior actions, if any, or initiated an action pursuant to available contract

1 rights against the licensee for the forfeiture of the license after being  
2 provided with notice by the department of disciplinary action as provided in  
3 subsection J of this section.

4 4. That the lienholder was free of responsibility for the conduct  
5 ~~which~~ THAT is the basis for the proposed revocation.

6 5. That the lienholder reasonably attempted to remain informed by the  
7 licensee about the business' conduct.

8 L. If the director decides not to revoke the license based on the  
9 circumstances provided in subsection K of this section, the director may  
10 issue an order requiring either, or both, of the following:

11 1. The forfeiture of all interest of the licensee in the license.

12 2. The lienholder to pay any civil monetary penalty imposed on the  
13 licensee.

14 M. If any on-sale licensee proposes to provide large capacity  
15 entertainment events or sporting events with an attendance capacity exceeding  
16 a limit established by the director, the director may request a security plan  
17 from the licensee that may include trained security officers, lighting and  
18 other requirements. This subsection exclusively prescribes the security  
19 requirements for a licensee and does not create any civil liability for the  
20 state, its agencies, agents or employees or a person licensed under this  
21 title or agents or employees of a licensee.

22 Sec. 3. Section 4-210.02, Arizona Revised Statutes, is amended to  
23 read:

24 4-210.02. Appeals from director

25 A. Except as provided in section 4-203.01, subsection E, a decision  
26 issued by the director is not final for purposes of appeal to superior court  
27 until it has first been appealed to and ruled on by the board. Any aggrieved  
28 party may appeal any final decision of the director regarding applicants or  
29 licensees to the board based on a contention that the decision was any of the  
30 following:

31 1. Founded on or contained errors of law ~~which shall~~ THAT specifically  
32 include errors of construction or application of any relevant rules.

33 2. Unsupported by any competent evidence as disclosed by the entire  
34 record.

35 3. Materially affected by unlawful procedures.

36 4. Based on a violation of any constitutional provision.

37 5. Arbitrary or capricious.

38 6. **BASED ON THE USE OF ACCOUNTING PRINCIPLES AND PRACTICES THAT ARE**  
39 **NOT GENERALLY ACCEPTED.**

40 B. The aggrieved party shall file the appeal in writing with the  
41 department within fifteen days after service of the notice of the decision of  
42 the director. The decision of the director is suspended until the  
43 determination of any appeal by the board.

1 C. The board or an administrative law judge shall conduct a hearing on  
2 the appeal pursuant to title 41, chapter 6, article 10 and may accept any  
3 relevant and material evidence and testimony and exercise the rights  
4 prescribed by section 12-2212 or section 4-112, subsection F. At the hearing  
5 an attorney or corporate officer or employee of a corporation may represent  
6 the corporation. The department shall prepare an official record of the  
7 hearing, including all testimony recorded mechanically or stenographically  
8 and all exhibits introduced. The department is not required to transcribe  
9 such record except pursuant to an appeal to the superior court, except that,  
10 upon written request and receipt of a reasonable fee for transcribing such  
11 record, the department may transcribe the record or allow for its  
12 transcription by the person requesting.

13 D. The board may affirm, reverse or modify any decision issued by the  
14 director.

15 Sec. 4. Section 4-213, Arizona Revised Statutes, is amended to read:  
16 4-213. Restaurant audit

17 A. The director may require a restaurant to submit an audit of its  
18 records to demonstrate compliance with section 4-205.02. The director shall  
19 not require an establishment to submit to such an audit more than once a year  
20 after the initial twelve months of operation even if the establishment is  
21 allowed to continue operating as a restaurant pursuant to subsection E of  
22 this section.

23 B. Except as provided in subsection D of this section, the department  
24 shall audit accounts, records and operations of a licensee that cover a  
25 twelve month period. WHEN CONDUCTING AN AUDIT, THE DEPARTMENT SHALL USE  
26 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND PRACTICES. An establishment  
27 that averages at least forty per cent of its gross revenue from the sale of  
28 food during the twelve month audit period shall be deemed to comply with the  
29 gross revenue requirements of section 4-205.02. The twelve month audit  
30 period shall fall within the sixteen months immediately preceding the  
31 beginning of the audit.

32 C. If the audit or a consent agreement that may be offered at the  
33 discretion of the director and that is signed by the licensee and the  
34 director reveals that the licensee did not meet the definition of a  
35 restaurant as prescribed in section 4-205.02 and the percentage of food sales  
36 determined by the audit or consent agreement was:

37 1. Less than thirty per cent, NOTWITHSTANDING SECTION 4-209,  
38 SUBSECTION A, the ~~department shall revoke the~~ RESTAURANT license EXPIRES  
39 EARLY AS PROVIDED IN SECTION 4-205.02, SUBSECTION D.

40 2. At least thirty per cent but less than thirty-seven per cent, the  
41 department shall allow the licensee a six month period to CONTINUE TO OPERATE  
42 UNDER THE RESTAURANT LICENSE, DURING WHICH THE LICENSEE SHALL either:

43 (a) Replace the license with a bar or beer and wine bar license,  
44 except that, at the end of that six month period, the department shall revoke

1 the restaurant license or the licensee shall surrender the restaurant  
2 license.

3 (b) Obtain permission from the department to continue operating with a  
4 restaurant license pursuant to subsection E of this section.

5 3. At least thirty-seven per cent but less than forty per cent, the  
6 licensee shall be granted a period of one year to **CONTINUE TO OPERATE UNDER**  
7 **THE RESTAURANT LICENSE, DURING WHICH THE LICENSEE SHALL ATTEMPT TO** increase  
8 the food percentage to at least forty per cent. If the licensee does not  
9 increase the percentage of food sales to at least forty per cent, the  
10 department shall allow the licensee a six month period to **CONTINUE TO OPERATE**  
11 **UNDER THE RESTAURANT LICENSE, DURING WHICH THE LICENSEE SHALL** either:

12 (a) Replace the license with a bar or beer and wine bar license,  
13 except that, at the end of the six month period, the department shall revoke  
14 the restaurant license or the licensee shall surrender the restaurant  
15 license.

16 (b) Obtain permission from the department to continue operating with a  
17 restaurant license pursuant to subsection E of this section.

18 D. The department may conduct an audit of a licensee described in  
19 section 4-209, subsection B, paragraph 12 after twelve months following the  
20 beginning of operations as a restaurant by the licensee to determine  
21 compliance by the licensee with section 4-205.02, except that the department  
22 may conduct an audit of a licensee within the first twelve months of  
23 operation if the licensee has made a substantial modification in the  
24 restaurant equipment, service or entertainment items or seating capacity  
25 during that twelve month period, in which event the department may conduct  
26 the audit for a period of less than twelve months.

27 E. A restaurant licensee may continue to operate with its restaurant  
28 license if its food sales are at least thirty per cent and less than forty  
29 per cent and the department approves the continuation of the restaurant  
30 license pursuant to this subsection and subsections C, F, G, H and I of this  
31 section. The department shall not approve more than fifteen restaurant  
32 licenses pursuant to this subsection and subsections C, F, G, H and I of this  
33 section in each **FISCAL YEAR.** ~~of the fiscal years 2006 2007 and 2007 2008.~~  
34 ~~The department shall not approve any additional licenses pursuant to this~~  
35 ~~subsection and subsections C, F, G, H and I of this section from consent~~  
36 ~~agreements entered into or audits conducted in any fiscal year after~~  
37 ~~2007-2008.~~ The department may approve a request submitted by the licensee to  
38 continue to operate with its restaurant license only if all of the following  
39 apply at the time the licensee files its request with the department:

40 1. The restaurant has a sufficient number of cooks, food preparation  
41 personnel and wait staff to prepare and provide the restaurant services that  
42 are necessary for the menu offered by the licensee.

43 2. The restaurant's equipment is of a sufficient grade and the size of  
44 the restaurant's kitchen is appropriate to the menu offered and the kitchen

1 occupies not less than twenty per cent of the total floor space of the  
2 licensed premises.

3 3. The menu is of a type consistent with a restaurant operation. In  
4 making a determination pursuant to this paragraph, the department may  
5 consider the proportion of food sales to alcohol sales, the price of  
6 spirituous liquor beverages and food served by the licensee and whether the  
7 licensee provides reduced price or complimentary food and beverages.

8 4. Not more than thirty per cent of the public interior area floor  
9 space consists of pool tables, dart or arcade games, barstools, cocktail  
10 tables and similar types of seating and dance floors, and the aggregate area  
11 of all dance floors on the premises is not greater than ten per cent of the  
12 total floor space of the public area of the premises.

13 5. The name of the restaurant does not include terms associated with  
14 alcohol consumption, such as "bar", "tavern", "pub", "spirits", "club",  
15 "lounge", "cabaret", "cantina" or "saloon".

16 6. Disposable dinnerware and smallware, including dining utensils, are  
17 not used except in outdoor areas.

18 F. If the department intends to approve a restaurant's continuation of  
19 operation pursuant to subsection E of this section:

20 1. The department shall advise the governing body of the city or town  
21 if the premises are within the incorporated limits of a city or town or the  
22 county of the department's intent.

23 2. The city or town or the county shall post a notice for at least  
24 twenty days on the licensed premises that the licensee has made a request for  
25 continuation to operate with a restaurant license and invite bona fide  
26 residents who own, lease or reside on property within a one mile radius of  
27 the licensed premises to file written comments with the department regarding  
28 the request within thirty days of the first posting of the notice.

29 G. If the local jurisdiction through its governing body or its  
30 authorized agent does not object within ninety days, the licensee may  
31 continue its operation as a restaurant.

32 H. If the department intends to disapprove a restaurant's continuation  
33 of operation pursuant to subsection E of this section, or if the local  
34 jurisdiction or its agent timely objects to its continuation, the department  
35 shall set a hearing before the board and the local jurisdiction shall post a  
36 notice of the hearing for a period of at least twenty days on the licensed  
37 premises. The city or town or the county may testify at the hearing and bona  
38 fide residents who own, lease or reside on property within a one mile radius  
39 of the licensed premises may testify before the board regarding the  
40 licensee's request. The board shall determine whether the restaurant may  
41 continue its operation based on consideration of the criteria listed in  
42 subsection E of this section.

43 I. A restaurant licensee may continue to operate with its restaurant  
44 license pursuant to subsection E of this section, if the restaurant and the  
45 restaurant licensee continue to meet the requirements of this subsection,

1 subsection E of this section and any other statute. As a condition of  
2 continuing operation as a restaurant under subsection E of this section, the  
3 department may require the licensee to specifically acknowledge the  
4 representations made by the licensee regarding its operations in support of  
5 the licensee's continuing operation as a restaurant. Notwithstanding  
6 subsection A of this section, if the licensee **MAKES SIGNIFICANT** changes ~~its~~  
7 **TO THE LAYOUT OR** operation ~~in any way~~ **OF THE RESTAURANT** that materially and  
8 detrimentally ~~affects~~ **AFFECT** the representations made by the licensee, the  
9 department may audit the licensee or terminate the license without an audit.

10 **J. IF THE RESULTS OF A RESTAURANT AUDIT ARE CHALLENGED OR APPEALED,**  
11 **THE PARTY WHO LOSES THE CHALLENGE OR APPEAL SHALL PAY THE FULL COSTS OF THE**  
12 **CHALLENGE OR APPEAL.**

13 Sec. 5. Section 4-224, Arizona Revised Statutes, is amended to read:

14 **4-224. Local ordinances; prohibitions**

15 A city, town or county shall not adopt ordinances or regulations in  
16 conflict with ~~the provisions of~~ this title including, but not limited to,  
17 ordinances or regulations pertaining to hours and days of liquor sales, ~~and~~  
18 ordinances or regulations that conflict with the definition of restaurant  
19 ~~contained in this title~~ **PRESCRIBED IN SECTION 4-205.02 AND ORDINANCES OR**  
20 **REGULATIONS THAT CONFLICT WITH THE ENFORCEMENT OR STIPULATIONS BY LICENSEES**  
21 **OF THE LEGAL DRINKING AGE AS PRESCRIBED IN THIS TITLE.**

22 Sec. 6. Section 4-241, Arizona Revised Statutes, is amended to read:

23 **4-241. Selling or giving liquor to underage person; illegally**  
24 **obtaining liquor by underage person; violation;**  
25 **classification; definitions**

26 A. A licensee, an employee or any other person who questions or has  
27 reason to question whether or not a person ordering, purchasing, attempting  
28 to purchase or otherwise procuring or attempting to procure the serving or  
29 delivery of spirituous liquor is under the legal drinking age shall require  
30 the person to exhibit a written instrument of identification and may require  
31 the person on a card to be retained by the licensee to sign the person's  
32 name, the date, ~~and~~ and the number of such identification, **EXCEPT THAT THIS**  
33 **REQUIREMENT DOES NOT APPLY TO AN EMPLOYEE WHO IS OPERATING WITHIN AN**  
34 **AGE-RESTRICTED AREA OF THE PREMISES.** An off-sale retail licensee or employee  
35 of an off-sale retail licensee shall require an instrument of identification  
36 from any customer who appears to be under twenty-seven years of age and who  
37 is using a drive-through or other physical feature of the licensed premises  
38 that allows a customer to purchase spirituous liquor without leaving the  
39 customer's vehicle. The following written instruments are the only  
40 acceptable types of identification:

41 1. An unexpired driver license issued by any state or Canada if the  
42 license includes a picture of the licensee.

43 2. A nonoperating identification license issued pursuant to section  
44 28-3165 or an equivalent form of identification license issued by any state

1 or Canada if the license includes a picture of the person and the person's  
2 date of birth.

3 3. An armed forces identification card.

4 4. A valid unexpired passport or border crossing identification card  
5 ~~which~~ THAT is issued by a government or A voter card THAT IS issued by the  
6 government of Mexico ~~and which~~ IF THE PASSPORT OR CARD contains a photograph  
7 of the person and the person's date of birth.

8 B. A licensee, an employee or any other person who ~~sells, gives,~~  
9 ~~serves or furnishes spirituous liquor to~~ ALLOWS ENTRY TO AN AGE-RESTRICTED  
10 AREA BY a person who is under the legal drinking age without having recorded  
11 and retained a record of the person's age, an electronic file or a printed  
12 document produced by a device that reads the person's age from the instrument  
13 of identification and obtains a signature from any person ~~who~~ WHOM the  
14 licensee has reason to question if the identification belonged to the person  
15 presenting the identification, or a dated and signed photocopy of the  
16 instrument of identification exhibited as prescribed by subsection A of this  
17 section, is deemed to have constructive knowledge of the person's age. This  
18 ~~section shall~~ SUBSECTION DOES not shift the presumption of constructive  
19 knowledge of a person's age for anyone using a device that reads the person's  
20 age from the instrument of identification, if a reasonable person would have  
21 reason to question if the identification belonged to the person presenting  
22 the identification.

23 C. A person who is under the legal drinking age and who misrepresents  
24 the person's age to any person by means of a written instrument of  
25 identification with the intent to induce a person to sell, serve, give or  
26 furnish spirituous liquor contrary to law is guilty of a class 1 misdemeanor.

27 D. A person who is under the legal drinking age and who solicits  
28 another person to purchase, sell, give, serve or furnish spirituous liquor  
29 contrary to law is guilty of a class 3 misdemeanor.

30 E. A person who is under the legal drinking age and who uses a  
31 fraudulent or false written instrument of identification or identification of  
32 another person or uses a valid license or identification of another person to  
33 gain access to a licensed establishment is guilty of a class 1 misdemeanor.

34 F. A person who uses a driver or nonoperating identification license  
35 in violation of subsection C or E of this section is subject to suspension of  
36 the driver or nonoperating identification license as provided in section  
37 28-3309. A person who does not have a valid driver or nonoperating  
38 identification license and who uses a driver or nonoperating identification  
39 license of another in violation of subsection C or E of this section has the  
40 person's right to apply for a driver or nonoperating identification license  
41 suspended as provided by section 28-3309.

42 G. A person who knowingly influences the sale, giving or serving of  
43 spirituous liquor to a person under the legal drinking age by misrepresenting  
44 the age of such person or who orders, requests, receives or procures  
45 spirituous liquor from any licensee, employee or other person with the intent

1 of selling, giving or serving it to a person under the legal drinking age is  
2 guilty of a class 1 misdemeanor. In addition to other penalties provided by  
3 law, a judge may suspend a driver license issued to or the driving privilege  
4 of a person for not more than thirty days for a first conviction and not more  
5 than six months for a second or subsequent conviction under this subsection.

6 H. A person who is of legal drinking age and who is an occupant of  
7 unlicensed premises is guilty of a class 1 misdemeanor if both of the  
8 following apply:

9 1. Such person knowingly allows a gathering on such unlicensed  
10 premises of two or more persons who are under the legal drinking age and who  
11 are neither:

12 (a) Members of the immediate family of such person.

13 (b) Permanently residing with such person.

14 2. Such person knows or should know that one or more of the persons  
15 under the legal drinking age is in possession of or consuming spirituous  
16 liquor on the unlicensed premises.

17 I. For the purposes of subsection H of this section, "occupant" means  
18 a person who has legal possession or the legal right to exclude others from  
19 the unlicensed premises.

20 J. A peace officer shall forward or electronically transfer to the  
21 director of the department of transportation the affidavit required by  
22 section 28-3310 if the peace officer has arrested a person for the commission  
23 of an offense for which, on conviction, suspension of the license or  
24 privilege to operate a motor vehicle is required by section 28-3309,  
25 subsection A, B or D, or if the peace officer has confiscated a false  
26 identification document used by the person to gain access to licensed  
27 premises.

28 K. A person who acts under a program of testing compliance with this  
29 title ~~which~~ THAT is approved by the director is not in violation of section  
30 4-244.

31 L. Law enforcement agencies may use persons who are under the legal  
32 drinking age to test compliance with this section and section 4-244,  
33 paragraph 9 by a licensee if the law enforcement agency has reasonable  
34 suspicion that the licensee is violating this section or section 4-244,  
35 paragraph 9. A person who is under the legal drinking age and who purchases  
36 or attempts to purchase spirituous liquor under the direction of a law  
37 enforcement agency pursuant to this subsection is immune from prosecution for  
38 that purchase or attempted purchase. Law enforcement agencies may use a  
39 person under the legal drinking age pursuant to this subsection only if:

40 1. The person is at least fifteen but not more than nineteen years of  
41 age.

42 2. The person is not employed on an incentive or quota basis.

43 3. The person's appearance is that of a person who is under the legal  
44 drinking age.

1           4. A photograph of the person is taken no more than twelve hours  
2 before the purchase or attempted purchase. The photograph shall accurately  
3 depict the person's appearance and attire. A licensee or an employee of a  
4 licensee who is cited for selling spirituous liquor to a person under the  
5 legal drinking age pursuant to this subsection shall be permitted to inspect  
6 the photograph immediately after the citation is issued. The person's  
7 appearance at any trial or administrative hearing that results from a  
8 citation shall not be substantially different from the person's appearance at  
9 the time the citation was issued.

10           5. The person places, receives and pays for the person's order of  
11 spirituous liquor. An adult shall not accompany the person onto the premises  
12 of the licensee.

13           6. The person does not consume any spirituous liquor.

14           M. DURING THE HOURS OF OPERATION OF THE LICENSED PREMISES DURING WHICH  
15 THE PRIMARY OPERATION IS THE SERVICE OF SPIRITUOUS LIQUOR, THE LICENSEE MAY  
16 REQUIRE THAT A TRAINED DOORPERSON BE STATIONED AT THE ENTRANCE TO THE  
17 PREMISES TO CHECK THE IDENTIFICATION OF PERSONS ENTERING THE PREMISES AND  
18 OTHER PERSONS WHO HAVE ALREADY ENTERED THE PREMISES AND WHO APPEAR TO BE  
19 UNDER TWENTY-ONE YEARS OF AGE. IF THE TRAINED DOORPERSON DETERMINES DURING  
20 THE HOURS OF OPERATION OF THE LICENSED PREMISES DURING WHICH THE PRIMARY  
21 OPERATION IS THE SERVICE OF SPIRITUOUS LIQUOR THAT A PERSON WHO PREVIOUSLY  
22 ENTERED THE PREMISES IS UNDER TWENTY-ONE YEARS OF AGE, THE DOORPERSON SHALL  
23 ORDER THAT PERSON TO LEAVE THE PREMISES AFTER THE PERSON HAS FINISHED  
24 CONSUMING ANY FOOD PREVIOUSLY ORDERED BY THAT PERSON. AFTER ALL PERSONS WHO  
25 ARE UNDER TWENTY-ONE YEARS OF AGE ARE REMOVED, THAT AREA OF THE PREMISES  
26 SHALL BECOME AN AGE-RESTRICTED AREA. IF A TRAINED DOORPERSON HAS CHECKED A  
27 PERSON'S IDENTIFICATION, THE PHOTOGRAPH ON THE IDENTIFICATION APPEARS TO BE  
28 THAT SAME PERSON, THE IDENTIFICATION SHOWS THAT THE PERSON IS TWENTY-ONE  
29 YEARS OF AGE OR OLDER AND THE TRAINED DOORPERSON DOCUMENTS THIS INFORMATION  
30 IN A LOGBOOK OR ELECTRONIC RECORD, THE LICENSEE AND THE TRAINED DOORPERSON  
31 ARE IMMUNE FROM CIVIL AND CRIMINAL LIABILITY IF THAT PERSON IS ACTUALLY UNDER  
32 TWENTY-ONE YEARS OF AGE. IF THE LICENSEE CHOOSES NOT TO CHECK IDENTIFICATION  
33 AT THE DOOR, THE LICENSEE SHALL CHECK IDENTIFICATION WHEN PATRONS ORDER  
34 SPIRITUOUS LIQUOR AND THIS SUBSECTION DOES NOT APPLY.

35           ~~M.~~ N. The department may adopt rules to carry out the purposes of  
36 this section.

37           O. FOR THE PURPOSES OF THIS SECTION:

38           1. "AGE-RESTRICTED AREA" MEANS A SEPARATE AREA OF THE LICENSED  
39 PREMISES THAT IS APPROVED BY THE DEPARTMENT, THE ENTRY TO WHICH IS  
40 CONTINUOUSLY MONITORED BY A TRAINED DOORPERSON AND THAT IS SPECIFICALLY  
41 DESIGNATED FOR PERSONS WHO ARE OVER THE LEGAL DRINKING AGE.

42           2. "HOURS OF OPERATION OF THE LICENSED PREMISES DURING WHICH THE  
43 PRIMARY OPERATION IS THE SERVICE OF SPIRITUOUS LIQUOR" MEANS THE HOURS IN  
44 WHICH LESS THAN HALF THE CUSTOMERS ON THE LICENSED PREMISES ARE CONSUMING  
45 PLATES OF FOOD.

1           Sec. 7. Section 4-244, Arizona Revised Statutes, is amended to read:

2           4-244. Unlawful acts

3           It is unlawful:

4           1. For a person to buy for resale, sell or deal in spirituous liquors  
5 in this state without first having procured a license duly issued by the  
6 board.

7           2. For a person to sell or deal in alcohol for beverage purposes  
8 without first complying with this title.

9           3. For a distiller, vintner, brewer or wholesaler knowingly to sell,  
10 dispose of or give spirituous liquor to any person other than a licensee  
11 except in sampling wares as may be necessary in the ordinary course of  
12 business, except in donating spirituous liquor to a nonprofit organization  
13 which has obtained a special event license for the purpose of charitable fund  
14 raising activities or except in donating spirituous liquor with a cost to the  
15 distiller, brewer or wholesaler of up to one hundred dollars in a calendar  
16 year to an organization that is exempt from federal income taxes under  
17 section 501(c) of the internal revenue code and not licensed under this  
18 title.

19           4. For a distiller, vintner or brewer to require a wholesaler to offer  
20 or grant a discount to a retailer, unless the discount has also been offered  
21 and granted to the wholesaler by the distiller, vintner or brewer.

22           5. For a distiller, vintner or brewer to use a vehicle for trucking or  
23 transportation of spirituous liquors unless there is affixed to both sides of  
24 the vehicle a sign showing the name and address of the licensee and the type  
25 and number of the person's license in letters not less than three and  
26 one-half inches in height.

27           6. For a person to take or solicit orders for spirituous liquors  
28 unless the person is a salesman or solicitor of a licensed wholesaler, a  
29 salesman or solicitor of a distiller, brewer, vintner, importer or broker or  
30 a registered retail agent.

31           7. For any retail licensee to purchase spirituous liquors from any  
32 person other than a solicitor or salesman of a wholesaler licensed in this  
33 state.

34           8. For a retailer to acquire an interest in property owned, occupied  
35 or used by a wholesaler in his business, or in a license with respect to the  
36 premises of the wholesaler.

37           9. Except as provided in paragraphs 10 and 11 of this section, for a  
38 licensee or other person to sell, furnish, dispose of or give, or cause to be  
39 sold, furnished, disposed of or given, to a person under the legal drinking  
40 age or for a person under the legal drinking age to buy, receive, have in the  
41 person's possession or consume spirituous liquor. This paragraph shall not  
42 prohibit the employment by an off-sale retailer of persons who are at least  
43 sixteen years of age to check out, if supervised by a person on the premises  
44 who is at least nineteen years of age, package or carry merchandise,  
45 including spirituous liquor, in unbroken packages, for the convenience of the

1 customer of the employer, if the employer sells primarily merchandise other  
2 than spirituous liquor.

3 10. For a licensee to employ a person under the age of nineteen years  
4 to manufacture, sell or dispose of spirituous liquors. This paragraph shall  
5 not prohibit the employment by an off-sale retailer of persons who are at  
6 least sixteen years of age to check out, if supervised by a person on the  
7 premises who is at least nineteen years of age, package or carry merchandise,  
8 including spirituous liquor, in unbroken packages, for the convenience of the  
9 customer of the employer, if the employer sells primarily merchandise other  
10 than spirituous liquor.

11 11. For an on-sale retailer to employ a person under the age of  
12 nineteen years in any capacity connected with the handling of spirituous  
13 liquors. This paragraph does not prohibit the employment by an on-sale  
14 retailer of a person under the age of nineteen years who cleans up the tables  
15 on the premises for reuse, removes dirty dishes, keeps a ready supply of  
16 needed items and helps clean up the premises.

17 12. For a licensee, when engaged in waiting on or serving customers, to  
18 consume spirituous liquor or for a licensee or on-duty employee to be on or  
19 about the licensed premises while in an intoxicated or disorderly condition.

20 13. For an employee of a retail licensee, during that employee's  
21 working hours or in connection with such employment, to give to or purchase  
22 for any other person, accept a gift of, purchase for himself or consume  
23 spirituous liquor, except that:

24 (a) An employee of a licensee, during that employee's working hours or  
25 in connection with the employment, while the employee is not engaged in  
26 waiting on or serving customers, may give spirituous liquor to or purchase  
27 spirituous liquor for any other person.

28 (b) An employee of an on-sale retail licensee, during that employee's  
29 working hours or in connection with the employment, while the employee is not  
30 engaged in waiting on or serving customers, may taste samples of beer or wine  
31 not to exceed four ounces per day or distilled spirits not to exceed two  
32 ounces per day provided by an employee of a wholesaler or distributor who is  
33 present at the time of the sampling.

34 (c) An employee of an on-sale retail licensee, under the supervision  
35 of a manager as part of the employee's training and education, while not  
36 engaged in waiting on or serving customers may taste samples of distilled  
37 spirits not to exceed two ounces per educational session or beer or wine not  
38 to exceed four ounces per educational session, and provided that a licensee  
39 shall not have more than two educational sessions in any thirty day period.

40 (d) An unpaid volunteer who is a bona fide member of a club and who is  
41 not engaged in waiting on or serving spirituous liquor to customers may  
42 purchase for himself and consume spirituous liquor while participating in a  
43 scheduled event at the club. An unpaid participant in a food competition may  
44 purchase for himself and consume spirituous liquor while participating in the  
45 food competition.

1 (e) An unpaid volunteer of a special event licensee under section  
2 4-203.02 may purchase and consume spirituous liquor while not engaged in  
3 waiting on or serving spirituous liquor to customers at the special event.  
4 This subdivision does not apply to an unpaid volunteer whose responsibilities  
5 include verification of a person's legal drinking age, security or the  
6 operation of any vehicle or heavy machinery.

7 14. For a licensee or other person to serve, sell or furnish spirituous  
8 liquor to a disorderly or obviously intoxicated person, or for a licensee or  
9 employee of the licensee to allow or permit a disorderly or obviously  
10 intoxicated person to come into or remain on or about the premises, except  
11 that a licensee or an employee of the licensee may allow an obviously  
12 intoxicated person to remain on the premises for a period of time of not to  
13 exceed thirty minutes after the state of obvious intoxication is known or  
14 should be known to the licensee in order that a nonintoxicated person may  
15 transport the obviously intoxicated person from the premises. For THE  
16 purposes of this ~~section~~ PARAGRAPH, "obviously intoxicated" means inebriated  
17 to the extent that a person's physical faculties are substantially impaired  
18 and the impairment is shown by significantly uncoordinated physical action or  
19 significant physical dysfunction that would have been obvious to a reasonable  
20 person.

21 15. For an on-sale or off-sale retailer or an employee of such retailer  
22 to sell, dispose of, deliver or give spirituous liquor to a person between  
23 the hours of 2:00 a.m. and 6:00 a.m. on weekdays, and 2:00 a.m. and 10:00  
24 a.m. on Sundays.

25 16. For a licensee or employee to knowingly permit any person on or  
26 about the licensed premises to give or furnish any spirituous liquor to any  
27 person under the age of twenty-one or knowingly permit any person under the  
28 age of twenty-one to have in the person's possession spirituous liquor on the  
29 licensed premises.

30 17. For an on-sale retailer or an employee of such retailer to allow a  
31 person to consume or possess spirituous liquors on the premises between the  
32 hours of 2:30 a.m. and 6:00 a.m. on weekdays, and 2:30 a.m. and 10:00 a.m.  
33 on Sundays.

34 18. For an on-sale retailer to permit an employee or for an employee to  
35 solicit or encourage others, directly or indirectly, to buy the employee  
36 drinks or anything of value in the licensed premises during the employee's  
37 working hours. No on-sale retailer shall serve employees or allow a patron  
38 of the establishment to give spirituous liquor to, purchase liquor for or  
39 drink liquor with any employee during the employee's working hours.

40 19. For an off-sale retailer or employee to sell spirituous liquor  
41 except in the original unbroken container, to permit spirituous liquor to be  
42 consumed on the premises or to knowingly permit spirituous liquor to be  
43 consumed on adjacent property under the licensee's exclusive control.

44 20. For a person to consume spirituous liquor in a public place,  
45 thoroughfare or gathering. The license of a licensee permitting a violation

1 of this paragraph on the premises shall be subject to revocation. This  
2 paragraph does not apply to the sale of spirituous liquors on the premises of  
3 and by an on-sale retailer. This paragraph also does not apply to a person  
4 consuming beer from a broken package in a public recreation area or on  
5 private property with permission of the owner or lessor or on the walkways  
6 surrounding such private property.

7 21. For a person to have possession of or to transport spirituous  
8 liquor which is manufactured in a distillery, winery, brewery or rectifying  
9 plant contrary to the laws of the United States and this state. Any property  
10 used in transporting such spirituous liquor shall be forfeited to the state  
11 and shall be seized and disposed of as provided in section 4-221.

12 22. For an on-sale retailer or employee to allow a person under the  
13 legal drinking age to remain in an area on the licensed premises during those  
14 hours in which its primary use is the sale, dispensing or consumption of  
15 alcoholic beverages after the licensee, or the licensee's employees, know or  
16 should have known that the person is under the legal drinking age. An  
17 on-sale retailer may designate an area of the licensed premises as an area in  
18 which spirituous liquor will not be sold or consumed for the purpose of  
19 allowing underage persons on the premises if the designated area is separated  
20 by a physical barrier and at no time will underage persons have access to the  
21 area in which spirituous liquor is sold or consumed. The director, or a  
22 municipality, may adopt rules to regulate the presence of underage persons on  
23 licensed premises provided the rules adopted by a municipality are more  
24 stringent than those adopted by the director. The rules adopted by the  
25 municipality shall be adopted by local ordinance. This paragraph does not  
26 apply:

27 (a) If the person under the legal drinking age is accompanied by a  
28 spouse, parent or legal guardian of legal drinking age or is an on-duty  
29 employee of the licensee.

30 (b) If the owner, lessee or occupant of the premises is a club as  
31 defined in section 4-101, paragraph 7, subdivision (a) and the person under  
32 the legal drinking age is any of the following:

33 (i) An active duty military service member.

34 (ii) A veteran.

35 (iii) A member of the United States army national guard or the United  
36 States air national guard.

37 (iv) A member of the United States military reserve forces.

38 (c) To the area of the premises used primarily for the serving of food  
39 during the hours when food is served.

40 (d) IF THE LICENSEE DETERMINES THAT COMPLIANCE WITH THIS PARAGRAPH  
41 INTERFERES WITH THE LICENSEE'S IDENTIFICATION CHECKS AT THE ENTRY TO THE  
42 PREMISES.

43 23. For an on-sale retailer or employee to conduct drinking contests,  
44 to sell or deliver to a person an unlimited number of spirituous liquor  
45 beverages during any set period of time for a fixed price, to deliver more

1 than thirty-two ounces of beer, one liter of wine or four ounces of distilled  
2 spirits in any spirituous liquor drink to one person at one time for that  
3 person's consumption or to advertise any practice prohibited by this  
4 paragraph.

5 24. For a licensee or employee to knowingly permit the unlawful  
6 possession, use, sale or offer for sale of narcotics, dangerous drugs or  
7 marijuana on the premises.

8 25. For a licensee or employee to knowingly permit prostitution or the  
9 solicitation of prostitution on the premises.

10 26. For a licensee or employee to knowingly permit unlawful gambling on  
11 the premises.

12 27. For a licensee or employee to knowingly permit trafficking or  
13 attempted trafficking in stolen property on the premises.

14 28. For a licensee or employee to fail or refuse to make the premises  
15 or records available for inspection and examination as provided in this title  
16 or to comply with a lawful subpoena issued under this title.

17 29. For any person other than a peace officer, the licensee or an  
18 employee of the licensee acting with the permission of the licensee to be in  
19 possession of a firearm while on the licensed premises of an on-sale retailer  
20 knowing such possession is prohibited. This paragraph shall not be construed  
21 to include a situation in which a person is on licensed premises for a  
22 limited time in order to seek emergency aid and such person does not buy,  
23 receive, consume or possess spirituous liquor. This paragraph shall not  
24 apply to hotel or motel guest room accommodations nor to the exhibition or  
25 display of a firearm in conjunction with a meeting, show, class or similar  
26 event.

27 30. For a licensee or employee to knowingly permit a person in  
28 possession of a firearm other than a peace officer, the licensee or an  
29 employee of the licensee acting with the permission of the licensee to remain  
30 on the licensed premises or to serve, sell or furnish spirituous liquor to a  
31 person in possession of a firearm while on the licensed premises of an  
32 on-sale retailer. This paragraph shall not apply to hotel or motel guest  
33 room accommodations nor to the exhibition or display of a firearm in  
34 conjunction with a meeting, show, class or similar event. It shall be a  
35 defense to action under this paragraph if the licensee or employee requested  
36 assistance of a peace officer to remove such person.

37 31. For a licensee or employee to knowingly permit spirituous liquor to  
38 be removed from the licensed premises, except in the original unbroken  
39 package. This paragraph shall not apply to a person who removes a bottle of  
40 wine which has been partially consumed in conjunction with a purchased meal  
41 from the licensed premises if the cork is reinserted flush with the top of  
42 the bottle.

43 32. For a person who is obviously intoxicated to buy or attempt to buy  
44 spirituous liquor from a licensee or employee of a licensee or to consume  
45 spirituous liquor on licensed premises. **FOR THE PURPOSES OF THIS PARAGRAPH,**

1 "OBVIOUSLY INTOXICATED" MEANS INEBRIATED TO THE EXTENT THAT A PERSON'S  
2 PHYSICAL FACULTIES ARE SUBSTANTIALLY IMPAIRED AND THE IMPAIRMENT IS SHOWN BY  
3 SIGNIFICANTLY UNCOORDINATED PHYSICAL ACTION OR SIGNIFICANT PHYSICAL  
4 DYSFUNCTION THAT WOULD HAVE BEEN OBVIOUS TO A REASONABLE PERSON.

5 33. For a person under the age of twenty-one years to drive or be in  
6 physical control of a motor vehicle while there is any spirituous liquor in  
7 the person's body.

8 34. For a person under the age of twenty-one years to operate or be in  
9 physical control of a motorized watercraft that is underway while there is  
10 any spirituous liquor in the person's body. For the purposes of this  
11 paragraph, "underway" has the same meaning prescribed in section 5-301.

12 35. For a licensee, manager, employee or controlling person to  
13 purposely induce a voter, by means of alcohol, to vote or abstain from voting  
14 for or against a particular candidate or issue on an election day.

15 36. For a licensee to fail to report an occurrence of an act of  
16 violence to either the department or a law enforcement agency.

17 37. For a licensee to use a vending machine for the purpose of  
18 dispensing spirituous liquor.

19 38. For a licensee to offer for sale a wine carrying a label including  
20 a reference to Arizona or any Arizona city, town or geographic location  
21 unless at least seventy-five per cent by volume of the grapes used in making  
22 the wine were grown in Arizona.

23 39. For a retailer to knowingly allow a customer to bring spirituous  
24 liquor onto the licensed premises, except that an on-sale retailer may allow  
25 a wine and food club to bring wine onto the premises for consumption by the  
26 club's members and guests of the club's members in conjunction with meals  
27 purchased at a meeting of the club that is conducted on the premises and that  
28 at least seven members attend. An on-sale retailer who allows wine and food  
29 clubs to bring wine onto its premises under this paragraph shall comply with  
30 all applicable provisions of this title and any rules adopted pursuant to  
31 this title to the same extent as if the on-sale retailer had sold the wine to  
32 the members of the club and their guests. For the purposes of this  
33 paragraph, "wine and food club" means an association that has more than  
34 twenty bona fide members paying at least six dollars per year in dues and  
35 that has been in existence for at least one year.

36 40. For a person under the age of twenty-one years to have in the  
37 person's body any spirituous liquor. In a prosecution for a violation of  
38 this paragraph:

39 (a) Pursuant to section 4-249, it is a defense that the spirituous  
40 liquor was consumed in connection with the bona fide practice of a religious  
41 belief or as an integral part of a religious exercise and in a manner not  
42 dangerous to public health or safety.

43 (b) Pursuant to section 4-226, it is a defense that the spirituous  
44 liquor was consumed for a bona fide medicinal purpose and in a manner not  
45 dangerous to public health or safety.

1           41. For an employee of a licensee to accept any gratuity, compensation,  
2 remuneration or consideration of any kind to either:

3           (a) Permit a person who is under twenty-one years of age to enter any  
4 portion of the premises where that person is prohibited from entering  
5 pursuant to paragraph 22 of this section.

6           (b) Sell, furnish, dispose of or give spirituous liquor to a person  
7 who is under twenty-one years of age.

8           42. For a person to purchase, offer for sale or use any device, machine  
9 or process which mixes spirituous liquor with pure oxygen or another gas to  
10 produce a vaporized product for the purpose of consumption by inhalation.

11           43. For a retail licensee or an employee of a retail licensee to sell  
12 spirituous liquor to a person if the retail licensee or employee knows the  
13 person intends to resell the spirituous liquor.

14           Sec. 8. Section 4-311, Arizona Revised Statutes, is amended to read:

15           4-311. Liability for serving intoxicated person or minor;  
16 definition

17           A. A licensee is liable for property damage and personal injuries or  
18 is liable to a person who may bring an action for wrongful death pursuant to  
19 section 12-612, or both, if a court or jury finds all of the following:

20           1. The licensee sold spirituous liquor either to a purchaser who was  
21 obviously intoxicated, or to a purchaser under the legal drinking age without  
22 requesting identification containing proof of age or with knowledge that the  
23 person was under the legal drinking age.

24           2. The purchaser consumed the spirituous liquor sold by the licensee.

25           3. The consumption of spirituous liquor was a proximate cause of the  
26 injury, death or property damage.

27           B. No licensee is chargeable with knowledge of previous acts by which  
28 a person becomes intoxicated at other locations unknown to the licensee  
29 unless the person was obviously intoxicated. ~~If the licensee operates under  
30 a restaurant license, the finder of fact shall not consider any information  
31 obtained as a result of a restaurant audit conducted pursuant to section  
32 4-213 unless the court finds the information relevant.~~

33           C. For the purposes of subsection A, paragraph 2 of this section, if  
34 it is found that an underage person purchased spirituous liquor from a  
35 licensee and such underage person incurs or causes injuries or property  
36 damage as a result of the consumption of spirituous liquor within a  
37 reasonable period of time following the sale of the spirituous liquor, it  
38 shall create a rebuttable presumption that the underage person consumed the  
39 spirituous liquor sold to such person by the licensee.

40           D. For the purposes of this section, "obviously intoxicated" means  
41 inebriated to such an extent that a person's physical faculties are  
42 substantially impaired and the impairment is shown by significantly  
43 uncoordinated physical action or significant physical dysfunction that would  
44 have been obvious to a reasonable person.